THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 26881 OF 2006

Between :

Neelam Guravaiah
Nizampet, Khammam.

… Petitioner

And :

The District Collector,
Khammam District, Khammam
And others.

… Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 26881 OF 2006

ORAL ORDER :

This case illustrates yet again the irrationality in the functioning of the State.

The petitioner's grievance is as to the unlawful and criminal trespass of his land in an extent of Ac.3.09 gts, in Sy.No.286/AA in Khanapuram Haveli village, Khammam Urban Mandal, Khammam District, by the Municipal Commissioner, Khammam on 27.10.1986 in abuse of his official position and under the colour of office, for the ostensible purpose of formation of a 100 Ft, bye-pass road from FCI godowns to Yellendu road; in not taking lawful steps under the provisions of the Land Acquisition Act 1894 ('the Act'), and in failing to yet pay compensation for the acquired land.

Since the counter affidavit filed by the 1st respondent –

the District Collector, chronicles in greater detail the State irrationality, than has been pleaded by the writ petitioner, this court considers it appropriate to refer to the counter affidavit.

The 1st respondent who is the District Collector, Khammam, admits in the counter affidavit dated 30.11.2006 that the Commissioner, Khammam Municipality had taken possession of the petitioner's land on 27.10.1986 along with other lands for the formation of 100 Ft, bye-pass road. After unlawfully dispossessing the petitioner from his lands (without any authority of law except the naked and brute abuse of his public office) the Khammam Municipal Commissioner on 11.8.1987 is stated to have sent up proposals for acquisition of land (of regularization of the Commissioner's illegal activity). These proposals were processed by the District Collector, who addressed the Government for approval of the Draft Notification u/Sec.4(1) of the Act. The State Government without even enquiring as to how a citizen could have been dispossessed even without a notification u/Sec.4(1) of the Act and without initiating disciplinary proceedings against the Khammam Municipal Commissioner or the then District Collector, Khammam for failing to redress the illegality committed by public officials on a citizen, dithered on the decision pursuant to the proposal for the Draft Notification. According to the counter, the District Collector instructed the RDO, Khammam to submit fresh proposals for Draft Notification and Draft Declaration, on 3.3.1993.

It would appear that one N.Koteswara Rao one of the affected land owners filed W.P. No. 2485 of 1995 seeking a direction for the issuance of a Draft Notification u/Sec.4(1) of the Act. This court by the order dated 27.4.1995 issued directions to initiate land acquisition proceedings. The District Collector

then obtained a fresh requisition from the Commissioner, Khammam Municipality and again forwarded a proposal on 30.6.1997 for acquisition of an extent of Ac.7.22 gts, in several Sy. Nos. The District Collector approved the proposal on 2.12.1997 and a Draft Notification was published on 5.12.1997.

Even though citizens were already and unlwafully dispossessed of their lands, curiously urgency u/Sec.17 of the Act was not invoked and an empty formality of enquiry u/Sec. 5A was put into motion. Normally without any application of mind as to legitimate urgency Sec.5A enquiry is dispensed with. But in this case when citizens were unlawfully dispossessed of property by the State actors in criminal abuse of power, the ritual of a Sec.5A enquiry was enacted. Even that ritual of an enquiry, the District Collector confesses in the counter affidavit, could not be completed during 1998.

Apparently pursuing the habit that nothing should be done lawfully, it is admitted that even before concluding the enquiry u/Sec.5A, proposals for Draft Declaration u/Sec. 6 of the Act were submitted. The Draft Declaration u/Sec.6 was published on 1.1.1999 in the Gazette. However, no award was passed within the period of two years from the date of the notification u/Sec.4(1) of the Act. Therefore even the ritual of acquisition initiated by the publication of the Sec.4(1) notification dated 5.12.1997, lapsed.

Since the State and State agencies were unlawfully sitting pretty on citizen's property, there was no need perceived to even look up the bare provisions of the Land Acquisition Act.

There was endless correspondence thereafter too between various State agencies and their legal advisors as to what should be done about Sec. 11 of the Act. Eventually pursuant to the directions in another writ petition W.P.No. 4314

of 2005 it was decided to initiate proceedings under the Act for acquisition, afresh. There was again the usual/casual and laid back ritual of correspondence between the District Collector and the Secretary, Municipal Administration and the whole file pushing charade. After yet another bout of ceaseless consultations *de novo*, notification u/Sec.4(1) of the Act and Draft Declaration u/Sec.6 were published, on 15.10.2006.

The 1st respondent District Collector states further that the case is still at the preliminary verification stage and the award enquiry stands posted to 2.12.2006. The District Collector has also asserted, tongue in cheek, that *"necessary action is being taken to complete the process and pass award and payment of compensation to the awardees as early as possible"*.

The petitioner has been dispossessed unlawfully and such unlawful dispossession is admitted in the sworn affidavit of the District Collector, Khammam, to have occured on 27.10.1986 by the Commissioner, Khammam Municipality. It is not known whether the officer who then held the office of Commissioner, Khammam Municipality, has retired (gracefully on full pension) or is at some higher position of the State Executive pyramid replicating the excellent unlawful conduct of 1986.

The fact of the matter is that a citizen of this Republic has been unlawfully deprived of possession of his property, demonstrably and admittedly by persons holding public office and drawing sustenance out of the public exchequer and till date has not been paid any amount as compensation.

Having regard to the established track record of the respondents 1 and 2 in this case what the 1st respondent-District Collector understands by the expression "*as early as*

possible" is not known. The petitioner may not survive "the expeditious consideration" of his grievance by the respondents. At any rate he is entitled to some relief in his lifetime. The petitioner has certainly been wronged and serious legal injury has been visited on him by the gross abuse of office by persons in public office, irresponsibly holding public office.

The 1st respondent's counter does not even set out a whisper of apology for the admitted lawless conduct of successive State instrumentalities. The apathy that runs large in the counter of the 1st respondent is even more disturbing than the aggressively disturbing conduct of the State. Such insensitivity is inconsistent with an affirmative Government constitutionally injuncted to work for the weal and welfare of the realm, under an operative and obligated legislative architecture.

In the circumstances above, this court considers it appropriate to implead the State of Andhra Pradesh represented by its Chief Secretary as the 3rd respondent and the following directions are issued:

(A) The 3rd respondent shall depute an officer not inferior to the rank of a Secretary to Government, specially appointed to administratively supervise the passing of the award by the competent authority pursuant to the notification u/Sec. 4(1) of the Act dated 15.10.2006, published in the District Gazette No. 101/06, dt 25.10.2006 formally reinitiating the process of acquisition of the land of the petitioner and others, to ensure the completion of the acquisition process and passing of the award with utmost expedition. The officer so deputed by the 3rd respondent shall be conferred adequate powers to coordinate with other Departments

of the State to ensure expeditious conclusion of the acquisition process, to coordinate with the Finance or other relevant Departments to ensure deposit of the compensation awarded forthwith on the passing of the award. Such Officer shall also ensure that a procedurally flawless award enquiry is conducted to in accordance with law ;

(B) The petitioner shall be entitled to costs in an amount of Rs.25,000/- (Rupees Twentyfive thousand only) payable by the State of Andhra Pradesh for the legal injury suffered by him at the hands of the State and public officials under its control who under the colour of public office have unlawfully deprived him of his property on 27.10.1986, as admitted in the counter affidavit of the District Collector ;

(C) The 3rd respondent shall put in motion an appropriate level of administrative inquiry to identify the officer or officers who were responsible for depriving the petitioner of his land without the due authority of law, under the fig leaf of a public office and shall also explore whether the conduct of such officer/officers warrants initiation of prosecution for the criminal conduct or any other offence cognizable by law.

This court hopes and trusts that the 3rd respondent would be duly sensitive to the seriousness of the delinquency of persons in public office which has led to the criminal trespass committed on the petitioner and would take expeditious steps to identify the persons responsible and to bring to them the deserts of law, expeditiously and relentlessly.

The writ petition is allowed with costs as above. The State of Andhra Pradesh shall pay the costs to the petitioner as

directed above, within a period of seven (7) days from the date of receipt of a copy of this order.

Dated: 01.12.2006 ----------

Note:- Justice G.Raghuram

A copy of this order be communicated to the 3rd respondent forthwith.

(B/O)

Pvsn